

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ERNEST L. BROCKMAN,

Petitioner,

Civil Action No. 08-CV-10310

vs.

HON. BERNARD A. FRIEDMAN

THOMAS K. BELL,

Respondent.

**ORDER ACCEPTING AND ADOPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION, DENYING PETITION FOR A WRIT OF HABEAS CORPUS
AND DENYING PETITIONER A CERTIFICATE OF APPEALABILITY**

Magistrate Judge Paul J. Komives has issued a Report and Recommendation ("R&R") recommending that the court deny the petition in this matter for a writ of habeas corpus. The R&R also recommends that the court decline to issue a certificate of appealability. Petitioner has filed objections. The court has reviewed the matter and is persuaded that the magistrate judge has correctly analyzed the issues. Petitioner's objections do not show any error in the magistrate judge's analysis, but simply reiterate the argument raised in his petition – namely, that the prosecutor failed to prove malice sufficient to support petitioner's second-degree murder conviction. This argument fails for the reasons explained articulately in the R&R. In short, malice could properly be inferred from petitioner's extremely reckless driving.¹ As the magistrate judge correctly

¹ Petitioner's actions underlying the conviction were summarized by the Michigan Court of Appeals as follows:

The uncontroverted trial testimony revealed that defendant led police on a dangerous high speed chase. Police stopped defendant at a gas station when Detective Corey Bauman parked in front of defendant's truck and asked him to stop and put his hands up. Instead of complying, defendant got back into the truck and sped away. Then,

noted, the evidence in this case amply supported the malice element of second-degree murder. Accordingly,

IT IS ORDERED that Magistrate Judge Komives' R&R dated May 14, 2010, is hereby accepted and adopted as the findings and conclusions of the court.

IT IS FURTHER ORDERED that the petition in this matter is denied.

IT IS FURTHER ORDERED that no certificate of appealability shall issue.

S/Bernard A. Friedman_____
BERNARD A. FRIEDMAN
SENIOR UNITED STATES DISTRICT JUDGE

Dated: June 11, 2010
Detroit, Michigan

another police vehicle, who had its police lights and sirens activated directed defendant to stop. Despite the officer's attempts to get defendant to pull over, defendant drove on for miles in a frantic effort to elude police. Defendant drove in excess of the speed limit, in some instances in gross excess, disobeyed stop signs and red lights and weaved in and out of traffic. Defendant's blatantly dangerous driving caused nearby cars to pull over to the side of the road in an effort to avoid him. Even after an officer intentionally hit defendant's vehicle in order to get him to stop, defendant kept driving. The chase ended when defendant, driving 65 to 70 miles per hour in a residential zone of 25 mile per hour, collided with another vehicle, killing the driver of the other vehicle.

People v. Brockman, 2007 WL 397225, at *1 (Mich. App. Feb. 6, 2007).